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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,180	05/10/2000	Helmut Mothes	M0-6241/HR-2	7595

157 7590 10/07/2003

BAYER POLYMERS LLC
100 BAYER ROAD
PITTSBURGH, PA 15205

EXAMINER

COLE, MONIQUE T

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 10/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/787,180

0612
Applicant(s)

MOTHES ET AL.

Examiner

Monique Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

This Office Action is in response to Applicants' amendment filed on February 10, 2003 as Paper No. 9 and the supplemental amendment filed on February 21, 2003 as Paper No. 11.

Claims 20-42 are pending.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 20-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Schobel (USP 4,568,560).

Schobel teaches a process for preparing a controlled release encapsulated fragrance by encapsulating the fragrance in a coating composition comprising hydrophilic solid particles that comprise ethyl cellulose that encases a fragrance (abstract). Although not specified by Schobel, it is the position of the Examiner's position that the hydrophilic solid particles are capable of having reversible gel formation as temperature increases because the encapsulated particles of Schobel comprise the same ingredients as the encapsulate claimed by Applicant. When the encapsulated particles are added to water, fragrance is released in a time-related manner (col. 7, lines 25-31). Ethyl cellulose is added in an amount of up to 30% of the composition (claim 3). The ethyl cellulose may be coated on the capsules via fluidized bed apparatus (col. 3, lines 3-6). Example II directed to using the encapsulated fragrances in a detergent. Col. 7, lines 38-61 teaches the use of the encapsulated fragrances in a chewing gum. With respect to claims 24, 32

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and 37, methyl cellulose is taught as an encapsulating material (col. 4, lines 41-46).

Hydroxypropyl methyl cellulose is also taught in Example I of the reference.

Response to Arguments

3. Applicant's arguments filed February 10, 2003 have been fully considered but they are not persuasive. With respect to the rejection over Schobel, Applicants argue that 1) the hydrophilic particles of Schobel are not produced by fluidized bed spray granulation and 2) the coating of Schobel does not comprise modified cellulose.

4. With respect to the hydrophilic particles being produced by fluidized bed spray granulation, Schobel teaches granulation of the flavorants by spray drying dispersions of the flavorants in a fluid carrier (col. 2, lines 21-30). Therefore, fluidized bed spray granulation is disclosed by Schobel.

5. With respect to the encapsulating material comprising modified cellulose, Schobel teaches that the encapsulating material comprises a film former, such as ethyl cellulose. See Example II, stating "the coating composition comprising a film former (ethyl cellulose)..." Applicants are incorrect in stating that the modified cellulose is not a part of the encapsulating material. Applicants also note that the enteric compound, disclosed by Schobel, functions in delaying the release of the flavorant material, not the modified cellulose. The Examiner would like to point out that none of the claims require the modified cellulose to function in controlling the release of the fragrance. Even is such were a limitation in the claims, the modified cellulose compounds claimed by Applicants are the same as those disclosed by Schobel. Thus, the modified cellulose compounds would inherently be capable of functioning in controlling the release of the fragrance because they are presumed to have the same properties.

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6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique Cole whose telephone number is 703-305-0447. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 703-308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Monique Cole
Examiner
Art Unit 1743


Jill Warden
Supervisory Patent Examiner
Technology Center 1700